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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Protecting human rights and fundamental freedoms while countering terrorism

Report of the Secretary-General

Summary

The General Assembly, in its resolution 68/178, reaffirmed that States must ensure that any measure taken to combat terrorism complies with their obligations under international law, in particular human rights, refugee and humanitarian law, and called upon States countering terrorism to fully comply with their obligations under international law. The present report is submitted pursuant to that resolution. It refers to recent developments within the United Nations system in relation to human rights and counter-terrorism, including measures taken in support of the implementation of the United Nations Global Counter-Terrorism Strategy, notably through the activities of the Counter-Terrorism Implementation Task Force, in particular its Working Group on Promoting and Protecting Human Rights and the Rule of Law while Countering Terrorism; the Counter-Terrorism Committee Executive Directorate; the Human Rights Council, its various special procedures and the universal periodic review; the United Nations human rights treaty bodies; and the Office of the United Nations High Commissioner for Human Rights.

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I. Introduction

1. In its resolution 68/178 of 18 December 2013, the General Assembly reaffirmed that States must ensure that any measure taken to combat terrorism complies with their obligations under international law, in particular human rights, refugee and humanitarian law, and urged States countering terrorism to fully comply with their obligations under international law. It welcomed the work of the United Nations High Commissioner for Human Rights to implement the mandate granted in 2005 by Assembly resolution 60/158, and requested the High Commissioner to continue efforts in that regard; and took note with appreciation of the report of the Secretary-General on protecting human rights and fundamental freedoms while countering terrorism (A/68/298).

2. In the same resolution, the Assembly encouraged the Security Council and its Counter-Terrorism Committee to strengthen the links, cooperation and dialogue with relevant human rights bodies, in particular the Office of the United Nations High Commissioner for Human Rights (OHCHR), the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, other relevant special procedures and mechanisms of the Human Rights Council and relevant treaty bodies, giving due regard to the promotion and protection of human rights and the rule of law in their ongoing work relating to counter-terrorism.

3. In its resolution 68/276 of 13 June 2014, adopted at the conclusion of the fourth biennial review of the United Nations Global Counter-Terrorism Strategy (resolution 60/288, annex), the Assembly emphasized the importance of an integrated and balanced implementation of all four pillars of the Strategy. The Assembly also reasserted the fundamental role of the promotion and protection of human rights, fundamental freedoms and the rule of law, as reflected in pillar IV, in the implementation of all pillars of the Strategy.

4. The present report responds to the request of the General Assembly, in its resolution 68/178, that the Secretary-General submit a report on the implementation of the resolution to the Human Rights Council and to the Assembly at its seventieth session, as well as to the request of the former Commission on Human Rights, in its resolution 2005/80, for the High Commissioner to report to the Assembly on the implementation of that resolution. The report refers to recent developments within the United Nations system in relation to human rights and counter-terrorism, including measures taken in support of the implementation of the United Nations Global Counter-Terrorism Strategy. This includes the activities of the Counter-Terrorism Implementation Task Force, in particular its Working Group on Promoting and Protecting Human Rights and the Rule of Law while Countering Terrorism; the Counter-Terrorism Committee Executive Directorate; the Human Rights Council, its various special procedures and the universal periodic review; the United Nations human rights treaty bodies; and OHCHR.

II. Recent United Nations developments in the area of human rights and counter-terrorism

A. United Nations Global Counter-Terrorism Strategy and the Counter-Terrorism Implementation Task Force

5. OHCHR continues to be an active member of the Counter-Terrorism Implementation Task Force and promotes the mainstreaming of human rights across the work of the Task Force, in particular in the working groups of which it is a member. Within the Task Force, OHCHR co-chairs the Working Group on Promoting and Protecting Human Rights and the Rule of Law while Countering Terrorism, together with the Rule of Law Unit in the Executive Office of the Secretary-General.[1] The Working Group continues to assist Member States in implementing all human rights aspects of the United Nations Global Counter-Terrorism Strategy, in particular those contained in pillar IV, entitled "Measures to ensure respect for human rights for all and the rule of law as the fundamental basis of the fight against terrorism". An overview of the activities of the Counter-Terrorism Implementation Task Force and its working groups is contained in the report of the Secretary-General on the activities of the United Nations system in implementing the Strategy (A/68/180).

6. As co-chair of the Working Group on Promoting and Protecting Human Rights and the Rule of Law while Countering Terrorism of the Counter-Terrorism Implementation Task Force (the Human Rights Working Group), OHCHR has continued to promote respect for, and full compliance with, human rights obligations as part of effective counter-terrorism measures; support the exchange of good practices to promote and protect human rights, fundamental freedoms and the rule of law in the counter-terrorism context; and assist States in the implementation of the human rights aspects of the United Nations Global Counter-Terrorism Strategy, which runs through all pillars of the Strategy in line with the emphasis of Member States on the importance of its integrated and balanced implementation (see General Assembly resolution 68/276, paras. 2 and 7).

7. Under the leadership of OHCHR, the Working Group has continued to implement a long-term global project on human rights capacity-building for law enforcement officials involved in counter-terrorism, with the support of Denmark, Switzerland and the United States of America. The project continues to provide States with training and technical assistance to increase their knowledge, understanding and implementation of the international human rights framework and the rule of law in preventing, responding to and investigating terrorism threats. The project, by offering participating States access to human rights training, is aimed at encouraging operational police and security officials to embed respect for

[1] Other members include the Counter-Terrorism Committee Executive Directorate, the International Maritime Organization, the International Criminal Police Organization, the Analytical Support and Sanctions Monitoring Team established pursuant to Security Council resolution 1526 (2004), the Office of Legal Affairs of the Secretariat, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, the United Nations Interregional Crime and Justice Research Institute and UNODC. ICRC, UNHCR, the Office for the Coordination of Humanitarian Affairs and the Office of the Special Representative of the Secretary-General for Children and Armed Conflict participate as observers.

international human rights norms and the rule of law in their counter-terrorism programming and to increase cross-border and regional cooperation in this field.

8. The project included a second needs-assessment workshop, held in Ouagadougou in October 2013, which followed the first one in Amman earlier in 2013 and allowed the Working Group to identify the training needs of States. On the basis of this assessment, the Working Group has continued to focus on the development of human rights training modules on the international legal and policy framework, special investigation techniques, countering violent extremism, community-oriented policing, detention, interviewing techniques and the use of force, all specifically in the context of counter-terrorism.

9. The first training course under the project was conducted in Nigeria on from 16 to 18 January 2015 for 23 mid-ranking law enforcement and security officials. The training focused on the international legal framework for protecting human rights while countering terrorism, the legal limitations on the use of force; and the use of special investigative techniques. Each session gave practical guidance on how to deal with the complex issues that arise from countering terrorism in its various forms in compliance with international human rights law and international humanitarian law.

10. The Working Group has also expanded its series of basic human rights reference guides with funding support from the United Nations Counter-Terrorism Centre. Those guides serve as a practical reference to guide national action, provide checklists for national assessment processes and address capacity-building needs of States. As part of the project, the Working Group has published three more guides, on detention in the context of countering terrorism, conformity of national counter-terrorism legislation with international human rights law and the right to a fair trial and due process in the context of countering terrorism.[2] A human rights reference guide on the proscription of organizations is also under development.

11. Within the framework of the Counter-Terrorism Implementation Task Force, OHCHR has continued to highlight human rights concerns and to mainstream human rights and the rule of law across all of the activities of the Task Force and its working groups, in line with the Global Counter-Terrorism Strategy and General Assembly resolution 68/178. These include the Working Group on Supporting and Highlighting Victims of Terrorism, the Working Group on Border Management and Law Enforcement relating to Counter-Terrorism, the Working Group on Legal and Criminal Justice Responses to Counter Terrorism, the Working Group on the Protection of Critical Infrastructure, the Working Group on the Conditions Conducive to the Spread of Terrorism and the two Working Groups of the Whole — on National and Regional Counter-Terrorism Strategies and on Foreign Terrorist Fighters.

12. OHCHR contributed to two United Nations Counter-Terrorism Centre projects on the development of regional counter-terrorism strategies for the South African Development Community and the Central Africa region, highlighting the importance of human rights and the rule of law as the fundamental basis of effective, sustainable and legitimate regional counter-terrorism strategies. OHCHR also highlighted the need for a human rights-based approach at the Counter-Terrorism Implementation Task Force/European Union dialogues on

[2] Available from www.ohchr.org/EN/NewYork/Pages/Resources.aspx.

13 June 2014 and 6 July 2014 in New York and on 20 October 2014 in Brussels. The Assistant Secretary-General for Human Rights participated in the Counter-Terrorism Implementation Task Force coordination meeting in New York on 1 and 2 December 2014.

13. OHCHR deepened its engagement with civil society organizations during the reporting period on issues related to the implementation of the human rights aspects of the Strategy, as reflected in pillar I, which deals with measures to address conditions conducive to the spread of terrorism, as well as pillar IV (see para. 5 above). Civil society, through initiatives at the national and international levels, is crucial to effective and sustainable counter-terrorism activities and strategies that are in compliance with human rights and the rule of law. OHCHR participated in a retreat organized by the Global Centre for Cooperative Security, entitled "The next decade: Strengthening multilateral efforts for preventing and countering terrorism and violent extremism", on 8 and 9 June 2015 in New York, highlighting the need to ensure that multilateral efforts must heed international legal obligations.

14. In implementing its workplan for 2015, the Human Rights Working Group will continue to facilitate information exchange on human rights and rule of law issues, including capacity-building and good practice in the promotion and protection of human rights and the rule of law in the context of counter-terrorism. It will also identify gaps and weaknesses in counter-terrorism approaches taken by States and develop proposals for strengthening support to Member States on the promotion and protection of human rights and the rule of law in the context of counter-terrorism at the national, regional and global levels. Specific proposals will be developed on fair trial-related issues, gender and foreign fighters.

B. Counter-Terrorism Committee Executive Directorate

15. The Counter-Terrorism Committee and its Executive Directorate continue to address relevant human rights and rule of law issues in their assessment of Member States' efforts to implement Security Council resolutions 1373 (2001), 1624 (2005) and 2178 (2014).

16. On 14 May 2015, the Security Council issued a report on the implementation of resolution 2178 (2014) by States affected by foreign terrorist fighters (S/2015/338). The report was prepared by the Committee with the assistance of its Executive Directorate. It assesses the capacity of Member States to respond to the challenges posed by foreign terrorist fighters. The report discusses three areas that raise human rights concerns in the context of Member States' responses, namely the revocation of travel documents, the transfer within and between Member States of personal information of individuals and the criminalization of travel of foreign terrorist fighters.

17. On 26 May 2015, the Security Council issued an additional report on the gaps in the use of advanced passenger information and recommendations for expanding its use to stem the flow of foreign terrorist fighters (S/2015/377). The report highlights the need for Member States to ensure that their legislative framework incorporates the right to be protected against unlawful and arbitrary interference with privacy in the context of passenger data collection, retention, transmission and use.

18. In accordance with General Assembly resolution 68/178, the Executive Directorate continued to liaise with OHCHR, the Special Rapporteur on the promotion and protection of human rights while countering terrorism and other human rights mechanisms and mandate holders, including in relation to the preparation of, and follow-up to, country visits and the facilitation of technical assistance. In January 2015, the Executive Directorate convened a workshop in Mombasa, Kenya, aimed at furthering the implementation of resolutions 1624 (2005) and 2178 (2014). The workshop discussed strategies aimed at countering incitement to terrorism and enhancing dialogue among civilizations. OHCHR participated at expert level.

19. In June 2015, OHCHR briefed the Committee on the human rights and rule of law challenges posed by Security Council resolution 2178 (2014). The Office discussed the need to address the conditions conducive to terrorism, to ensure accountability for human rights violations as well as to ensure that measures aimed at stemming the flow of foreign fighters[3] comply with Member States' obligations under international human rights law. During the briefing, the Committee also explored new approaches towards encouraging Member States to uphold their international human rights obligations while countering terrorism. These include organizing meetings with relevant national authorities with human rights responsibilities during country visits by the Committee. In addition, the Executive Directorate has been requesting information from national authorities on the steps they take to ensure that draft counter-terrorism measures are subject to public review and comment by civil society and other stakeholders regarding compliance with international human rights law as well as other matters.

20. The Executive Directorate has also participated actively in other forums, including by making contributions to the design and implementation of technical assistance and capacity-building projects of the Human Rights Working Group, in which it actively participates. It has also worked with the United Nations Office on Drugs and Crime (UNODC) to promote respect for the rule of law and international human rights law in the investigation and prosecution of terrorism-related cases in the Maghreb region. The initiative, which is funded by the European Union, started in October 2013 and will span a period of four years. OHCHR participated in the inaugural workshop for beneficiary Member States held in Tunisia in June 2014. Under the initiative, UNODC provides national technical assistance to States, while the Executive Directorate seeks to promote good practices and regional cooperation.

21. Since the adoption of resolution 2178 (2014), the Committee and its Executive Directorate have also actively engaged Member States in a dialogue aimed at underscoring efforts towards countering violent extremism and empowering youth, families, women, religious, cultural and educational leaders within a human rights-compliant framework.

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[3] The term "foreign fighters" as used in the report of the High Commissioner for Human Rights to the Human Rights Council (A/HRC/28/28, para. 31) refers to individuals who leave their country of origin or habitual residence, motivated primarily by ideology or religion, and become involved in violence as part of an insurgency or non-State armed group in an armed conflict (even though they may also be motivated by payment). See Geneva Academy of International Humanitarian Law and Human Rights, *Foreign Fighters under International Law*, Academy Briefing No.7, October 2014.

C. Human Rights Council

22. In its resolution 25/7, the Council again urged all States to respect and protect all human rights while countering terrorism. It underscored the importance of accountability, calling on States to undertake prompt, independent and impartial fact-finding inquiries whenever there are plausible indications of breaches of their obligations under international human rights law as a result of any measures taken or means employed to counter terrorism and to ensure accountability.

23. In its resolution 29/9, the Council reiterated these and other concerns. It specifically urged States to take measures to ensure that counter-terrorism laws and implementing measures are consistent with and are applied in a manner that fully respects human rights, "in particular to ensure respect of the principle of certainty of the law by clear and precise provisions". It further acknowledged that the "active participation of civil society can reinforce ongoing governmental efforts to protect human rights and fundamental freedoms while countering terrorism".

24. The Council has also addressed with greater specificity some of the issues raised in resolutions 25/7 and 29/9. In its resolution 25/22, building on paragraph 13 of resolution 25/7 and previous resolutions, the Council urged States to ensure that any measures to counter terrorism, including the use of remotely piloted aircraft or armed drones, comply with their obligations under international law. It further called upon States to ensure transparency and to conduct prompt, independent and impartial investigations where there are indications of a violation caused by the use of armed drones. The Council decided to organize a panel discussion on the issue, which was held at its twenty-seventh session. A summary of the panel discussion was presented at the twenty-eighth session (A/HRC/28/38).

25. Following a report by OHCHR on the right to privacy in the digital age (A/HRC/27/37) and a panel discussion organized by the High Commissioner at the request of the Council (see A/HRC/28/39), both of which examined issues of mass surveillance on the grounds of national security, as well as other issues, the Council adopted resolution 28/16. In that resolution, the Council reaffirmed the right to privacy, recognized the global and open nature of the Internet and decided to appoint a special rapporteur on the right to privacy.

26. At its twenty-eighth session, the Council also adopted resolution 28/17 on the effects of terrorism on the enjoyment of human rights, in which it condemned all terrorist acts and expressed grave concern at their detrimental effects on human rights. A panel discussion on this subject was held at the twenty-ninth session of the Council (see A/HRC/30/64).

1. Universal periodic review

27. The Human Rights Council also addressed human rights issues in the context of counter-terrorism through the universal periodic review process. Its recommendations addressed a range of different issues. On a number of occasions, States were urged to ensure that legislation was compatible with international norms and standards. Concern was expressed regarding overbroad definitions of terrorism and related offences under domestic law, and it was recommended that legislation be subjected to regular review. There were also consistent calls upon States to abolish the death penalty, including for terrorism offences. The need to respect human rights and the rule of law and prevent violations during counter-terrorism

operations was also underscored. In this regard, the requirement to properly investigate alleged violations and bring perpetrators to justice was emphasized.

28. Recommendations were also made to States under review to ensure that counter-terrorism laws do not serve to undermine the rights of specific individuals and groups, including indigenous peoples, minorities, human rights defenders, refugees and stateless persons. States were advised to take protective measures against terrorist activities, and also to address the root causes of insecurity and radicalization. One recommendation highlighted the negative repercussions of both terrorism and unilateral coercive measures on national development plans and on the enjoyment of basic human rights by the State's citizens.

2. Special procedures

29. A key focus of the work of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has been on the use of remotely piloted aircraft in extraterritorial lethal counter-terrorism operations, which was the subject of his reports to the Human Rights Council and the General Assembly in March and September 2014, respectively (A/HRC/25/59 and A/69/397). These reports provide an overview of the deployment of drones and reported civilian casualty rates. The Special Rapporteur also surveyed relevant issues of international law, highlighting how some States take different positions in relation to the use of force and in terms of the application of international human rights law and international humanitarian law.

30. The Special Rapporteur participated in a number of related events, including a side event at the sixty-eighth session of the General Assembly on "Drones and the law" on 25 October 2013; a panel discussion held on 22 September 2014, during the twenty-seventh session of the Council, on "Ensuring use of remotely piloted aircraft or armed drones in counterterrorism and military operations in accordance with international law, including international human rights and humanitarian law"; and a hearing on "Drones and targeted killings: the need to uphold human rights" before the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe in Strasbourg.

31. On the right to privacy in the digital age, in February 2014, the Special Rapporteur took part in an expert seminar in Geneva hosted by the permanent missions of Austria, Brazil, Germany, Liechtenstein, Mexico, Norway and Switzerland and facilitated by the Geneva Academy of International Humanitarian Law and Human Rights. In his report to the General Assembly in September 2014 (A/69/397), the Special Rapporteur examined the use of mass digital surveillance for counter-terrorism purposes. He underlined that States had an obligation to respect the privacy and security of digital communications. He concluded that bulk access technology was inherently corrosive of online privacy and, in line with recommendations of the High Commissioner for Human Rights, highlighted the urgent need for States using such technology to revise and update national legislation to ensure consistency with international human rights law.

32. The Special Rapporteur has also addressed the human rights challenges posed by the fight against the Islamic State in Iraq and the Levant (ISIL) in a June 2015 report to the Council (A/HRC/29/51). In that report, he highlighted the obligation of the Security Council to act in the light of the gross violations committed by ISIL and the need for accountability. He also expressed concern regarding the broad

nature of some of the clauses contained in Security Council resolution 2178 (2014) and the possibility that the standard adopted for enforcement action could result in arbitrary enforcement action being taken (ibid., para. 42).

33. With respect to the need for accountability in the context of counter-terrorism activities, on 3 December 2013, the Special Rapporteur lodged third-party submissions in the cases *Al Nashiri v. Poland* (application No. 28761/11) and *Husayn (Abu Zubaydah) v. Poland* (application No. 7511/13) before the European Court of Human Rights. His submissions highlighted the duty of States to investigate allegations of secret detention, torture and rendition taking place on their territory and the way in which such investigations should be conducted when the material relevant to them engaged the State's interest in national security. Relatedly, on 9 December 2014, following the publication of a summary report by the United States Senate Select Committee,[4] the Special Rapporteur called upon the Government of the United States to bring to justice those responsible for the crimes of torture and enforced disappearance.

34. In a country visit to Chile from 17 to 30 July 2013, the Special Rapporteur examined the use of anti-terrorism legislation in connection with protests by indigenous Mapuche activists. In his report (A/HRC/25/59/Add.2), the Special Rapporteur formulated a number of key recommendations in the framework of a comprehensive and integrated national strategy for addressing the Mapuche question.

35. The threat to civil society from the abusive use of counter-terrorism legislation and measures has been a constant theme for the Special Rapporteur on the rights to freedom of peaceful assembly and of association. The Special Rapporteur has noted the "tendency in many States to view associations and peaceful assemblies as threats to national stability and security" (A/69/365). He has argued against derogation from obligations, stating that limitation measures, as provided for in the International Covenant on Civil and Political Rights, are adequate to combat terrorism or handle other security considerations (A/HRC/29/25/Add.3). The Special Rapporteur has written to Member States regarding the alleged resort to counter-terrorism legislation that is incompatible with international norms and standards.

36. In the context of measures purportedly taken to restrict terrorism funding and money laundering, the Special Rapporteur expressed concern at how Governments often treat businesses and civil society differently. He expressed concern at the fact that civil society organizations are singled out for greater scrutiny, including by Financial Action Task Force recommendation 8, underlining that there is no evidence that civil society is more prone than the private sector to money laundering activities or terrorism-related financial activity. He further highlighted that these restrictions, rather than legitimately advancing the fight against terrorism, are actually "used by some States as a cover for imposing politically motivated restrictions on civil society funding" (A/69/365). In a similar vein, in his 2013 report to the General Assembly (A/68/299), he underscored that any constraints on associations' ability to access foreign funding should be necessary in a democratic society and that common justifications offered by States, such as counter-terrorism measures, often did not meet that strict standard (see also A/HRC/23/39).

[4] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15397&LangID=E.

37. In his 2014 report to the Council (A/HRC/26/29), the Special Rapporteur explained how the use of national security or counter-terrorism legislation to restrict or prohibit the formation or registration of associations was often detrimental to the right to freedom of association of minority groups. Under the guise of fighting terrorism or extremism, associations comprised of minorities, including religious, linguistic or ethnic minorities, might be subjected to delays in registration, denial of registration, harassment and interference. He highlighted how States have often used such legislation to stifle dissent, repressing associations with views that are critical of the authorities. He underscored that "this legitimate interest should never be used as an excuse to silence critical or diverse voices". In his 2015 report to the Council (A/HRC/29/25), the Special Rapporteur highlighted how environmental and lands rights activists face criminalization of their activities and face severe charges and sentences, including for terrorist offences.

38. The Special Rapporteur's report following an official visit to Oman in September 2014 (HRC/29/25/Add.1) emphasized how important a free and diverse civil society is, that restrictions to free assembly and association rights are counterproductive and that marginalized groups are more likely to morph into extremist movements.

39. In his 2015 report to the Human Rights Council (A/HRC/29/32), the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression focused on the use of encryption and anonymity to exercise the rights to freedom of opinion and expression in the digital age. The Special Rapporteur recalled that any restrictions on encryption and anonymity must meet the test of legality, legitimacy, necessity and proportionality. As encryption and anonymity enable and facilitate the rights to freedom of opinion and expression, the Special Rapporteur urged States to promote strong encryption and anonymity. He bemoaned current trends, whereby States have often failed to provide adequate public justifications to support restrictions. The report explains how, although encryption and anonymity can frustrate counter-terrorism officials and make surveillance more complicated, State authorities have not generally identified situations where a restriction has been necessary to achieve a legitimate goal. He maintained that "many laws and policies regularly do not meet the standards of necessity and proportionality and have broad, deleterious effects on the ability of all individuals to exercise freely their rights to privacy and freedom of opinion and expression".

40. The Special Rapporteur on extrajudicial, summary or arbitrary executions has addressed a number of themes in the context of counter-terrorism measures. In his 2014 report to the General Assembly (A/68/382), he looked at the issue of drones and targeted killings both within and outside the context of armed conflict situations. The report questions whether the various terrorist groups that call themselves Al-Qaida, or associate themselves with Al-Qaida, today possess the kind of integrated command structure that would justify considering them a single party involved in a global non-international armed conflict. The report also notes the view of the International Committee of the Red Cross (ICRC) that this type of non-international armed conflict is not and has not been taking place. It further states that claims that drones are more precise in targeting cannot be accepted uncritically, not least because terms such as "terrorist" or "militant" are sometimes used to describe people who are civilians and thus protected from attack under international humanitarian law.

41. The report concludes that the legal framework for maintaining international peace and the protection of human rights is a coherent and well-established system, reflecting norms that have been developed over the centuries and have withstood the test of time. Highlighting the fact that the more permissive targeting framework of the laws of war is often used instead, the Special Rapporteur calls for a more diligent application of the rules to ensure the protection of the right to life.

42. In his April 2014 report to the Human Rights Council (A/HRC/26/36), the Special Rapporteur examined domestic legal frameworks for the use of force. The report noted that in Kenya, a law that incorporated most of the international requirements risked being repealed and that the threat of terrorism was being used to legitimize far-reaching infringements of civil liberties during protest. More generally, the report concluded that States should not use emergency situations or terrorist threats as a pretext to erode the right to life by granting unchecked powers to use force.

43. In his report to the Human Rights Council in 2014 (A/HRC/25/60), the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment focused on the scope and objective of the rule on the exclusion of evidence obtained by torture and other ill-treatment in judicial proceedings and in relation to acts by executive actors. The Special Rapporteur concluded that all actions of executive agencies should be reviewed under the absolute prohibition of torture and that the exclusionary rule should apply, by analogy, to the collecting, sharing and receiving of information by executive actors.

44. The Special Rapporteur expressed particular concern at the use of statements tainted by torture outside of "proceedings", narrowly defined, for other purposes, such as intelligence gathering or covert operations. He noted how cooperation in sharing intelligence between States had expanded significantly in the fight against terrorism and that some police, security and intelligence agencies had shown a willingness to receive and rely on information likely to have been obtained through torture and other ill-treatment and to share that information with one another outside of court proceedings, a practice made even more dangerous because of the secrecy and lack of transparency surrounding it. The Special Rapporteur reiterated that the absolute nature of the prohibition of torture and other ill-treatment meant that no exceptional circumstances whatsoever may be invoked as a justification for torture or other ill-treatment.

45. To ensure accountability in intelligence cooperation, truly independent intelligence review and oversight mechanisms should be established and enhanced. As a starting point for further development, the Special Rapporteur commended the guidelines proposed by the former Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (A/HRC/14/46).

46. Following a series of consultations involving Member States, civil society, academia and others, in April 2015 the Working Group on Arbitrary Detention adopted the final text of its draft basic principles and guidelines on remedies and procedures on the right of anyone deprived of his or her liberty by arrest or detention to bring proceedings before court.[5] The draft will be presented to the Council during its thirtieth session in September 2015. The draft principles and

[5] Available from www.ohchr.org/EN/Issues/Detention/Pages/DraftBasicPrinciples.aspx.

guidelines are of broad relevance to the counter-terrorism context but also include specific guidelines in the context of a state of emergency that threatens the independence or security of a State and in relation to those suspected of terrorism offences.

47. In the report on her official mission to Nigeria in 2014 (A/HRC/28/64/Add.2), the Special Rapporteur on minority issues noted her deep concern regarding the numerous deadly attacks carried out by Boko Haram, which had resulted in more than 2,000 deaths in the first half of 2014 alone. She underlined that Boko Haram provided a distorted interpretation of religious principles to justify its violent actions. The Special Rapporteur was impressed by numerous initiatives led by civil society and religious leaders to bridge the gap between communities in Plateau and Kaduna States. She urged the Government to set up and implement a comprehensive security and prevention strategy to combat unlawful actions by Boko Haram and other groups, in full compliance with human rights standards.

48. The Working Group on mercenaries is undertaking research on foreign fighters, which will be presented at the forthcoming session of the General Assembly. Following a visit to Tunisia between 1 and 8 July 2015, it issued some preliminary findings.[6] It had been told that foreign fighters were involved in direct hostilities or combat and were reported as perpetrators of a range of human rights abuses. The Working Group noted the absence of a specific national strategy to counter the phenomenon of foreign fighters. While acknowledging that the declaration of a state of emergency by the Government of Tunisia on 4 July 2014 was a measure to ensure greater security, given the broad potential for human rights restrictions flowing from the state of emergency, the Working Group urged the authorities to implement measures under it in conformity with international norms and standards.

49. Regarding the responses of States and the international community to increasing global foreign fighter activity, the Working Group recognized that concern was warranted with respect to the broad application of Security Council resolution 2178 (2014). The Working Group was encouraged by the comments of one Tunisian official, who had observed that the resolution should be more clear and specific, a position shared by the Working Group. It strongly recommended that any application of resolution 2178 (2014) be fully consistent with international human rights law. The Working Group further emphasized that a national action plan to address the foreign fighter phenomenon must balance punitive action with social measures and ensure the comprehensive adoption of human rights standards in all its elements.

50. In its report of 4 August 2014 (A/HRC/27/49), the Working Group on Enforced and Involuntary Disappearances noted that the number of cases transmitted to it demonstrated that enforced disappearance continued to be used across the world with the false and pernicious belief that it was a useful tool to preserve national security and combat terrorism or organized crime. It emphasized again that no circumstances whatsoever could be invoked to justify enforced disappearances (ibid., para 89). The Working Group continued to receive and respond to allegations in the context of counter-terrorism. For example, it wrote to the Government of Kenya expressing concerns about the alleged enforced

[6] Available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16219&LangID=E.

disappearance of 10 young men in Nairobi between 2011 and 2013 and other alleged human rights violations by the Anti-Terrorism Police Unit (see A/HRC/WGEID/104/1, paras. 71-78).

51. The Independent Expert on the promotion of a democratic and equitable international order noted that national and international terrorism had been used to justify huge increases in military spending and that focusing on the root causes of human insecurity was a more important way of tackling the problem (A/HRC/27/51, para. 22).

D. Human rights treaty bodies

52. The lack of clarity in domestic legislation concerning counter-terrorism remained a key concern for the Human Rights Committee during the reporting period. For example, the Committee recommended that Ireland introduce a definition of "terrorist acts" in its domestic legislation, which should be limited to offences that could justifiably be equated with terrorism and its serious consequences (CCPR/C/IRL/CO/4). It also highlighted excessively broad and vague definitions of terrorism, calling upon Israel to ensure that legislation was in full compliance with the International Covenant on Civil and Political Rights (CCPR/C/ISR/CO/4). In the context of concerns regarding lack of safeguards, it recommended that Sri Lanka take all measures to ensure that security measures contain clear prohibitions against arbitrary arrest and detention, safeguards against torture and protections for the rights to freedom of expression and association (CCPR/C/LKA/CO/5).

53. In reviewing the United States of America (see CCPR/C/USA/CO/4), the Committee expressed concern in relation to systematic practices of torture, ill-treatment or excessive use of force by members of the police or the security forces during arrest and/or interrogation of terrorism suspects. In relation to the practice of targeted killings in extraterritorial counter-terrorism operations using unmanned aerial vehicles, the Committee called for the State party to disclose the legal basis for specific attacks and ensure proper oversight of the use of drone strikes and investigations of alleged violations. The Committee specifically raised the issue of the lack of a timeline for closure of the Guantanamo Bay facility and called for expedition of the transfer of detainees designated for transfer. With respect to the Russian Federation (see CCPR/C/RUS/CO/7), the Committee called upon the Government to ensure accountability, including reparations for victims, in the context of a lack of investigations, prosecutions and convictions of State agents for wrongdoing in counter-terrorism actions.

54. At its 112th session, in October 2014, the Committee adopted its general comment No. 35 on article 9 (Liberty and security of person) of the International Covenant on Civil and Political Rights (CCPR/C/GC/35). In the general comment the Committee emphasizes that, in cases where States impose security detention without contemplation of a criminal charge, such detention presents severe risks of arbitrary detention in violation of the Covenant. It also underscores that the right to take proceedings for release from unlawful or arbitrary detention applies to all detention by official action or pursuant to official authorization, including security and counter-terrorism detention.

55. The Committee against Torture has expressed similar concerns to the Human Rights Committee regarding legislation and safeguards for detainees, and called upon Spain to review the detention regime with a view to its abolition (CAT/C/ESP/CO6). With reference to the United States, the Committee underscored the absolute prohibition of torture in the context of the use of extraordinary rendition, secret detention and abusive interrogation techniques. The Committee reiterated that no exceptional circumstances whatsoever, including any threat of terrorist acts, may be invoked as a justification of torture (CAT/C/USA/CO3-5).

56. The Committee on Enforced Disappearances has expressed concerns related to the frequent use of police custody, which may be extended several times in cases involving crimes of terrorism, recommending that France establish the right of appeal before a sitting judge, rather than the prosecution (CED/C/FRA/CO/1). It also expressed concerns regarding the use of incommunicado detention in Spain, which may extend for long periods in cases involving terrorism, during which accused persons do not have the right, inter alia, to appoint a lawyer of their own choosing, to speak in private with their assigned counsel or to inform a person of their choice of their detention or of their place of detention (CED/C/ESP/1). In this instance, it recommended that Spain adopt the necessary legislative and other measures to ensure the rights of all persons, regardless of the offence with which they are charged. The Committee also recommended to Germany that cooperation with third States in relation to counter-terrorism be conditional upon compliance with international obligations under human rights treaties (CED/C/DEU/CO/1).

III. Activities of the United Nations High Commissioner for Human Rights and his Office

57. In addition to its role as co-chair of the Human Rights Working Group of the Counter-Terrorism Implementation Task Force, OHCHR has continued to address issues related to the protection of human rights and fundamental freedoms while countering terrorism, and to make recommendations in this regard. In accordance with its thematic strategies for the period 2014-2017, OHCHR has prioritized support for Member States in their efforts to ensure that their security policies, strategies and measures are grounded firmly in respect for human rights and the rule of law. This includes assisting in the development and implementation of human rights-compliant security legislation; supporting security sector reform through a review of legal frameworks and support for the establishment of effective procedural safeguards and independent mechanisms for oversight; and supporting the design and delivery of human rights training to justice and security entities.

58. In his December 2014 report to the Human Rights Council (A/HRC/28/28), the High Commissioner focused on two related issues: legislative measures adopted by States in the context of counter-terrorism, and human rights issues related to the phenomenon of foreign fighters. The High Commissioner emphasized the importance of ensuring that States integrate compliance with their obligations under international human rights law into their efforts to stem the flow of foreign fighters by stepping up initiatives to address the conditions conducive to terrorism and counter violent extremism. While welcoming the affirmation of the importance of international law, including international human rights law, in Security Council resolution 2178 (2014), the High Commissioner raised concerns regarding the lack

of clarity and definitions in the resolution and the resulting potential for abuse. He also urged States to combat impunity and ensure accountability for any gross violation of international human rights law or serious violation of international humanitarian law.

59. In the report and elsewhere, the High Commissioner raised concerns regarding the compatibility of domestic counter-terrorism legislation with international human rights law, expressing concern at the human rights implications of the law on national security adopted by China on 1 July 2015 and a draft anti-terror law in Malaysia.[7]

60. In her briefing to the Counter-Terrorism Committee in October 2013, the previous High Commissioner highlighted areas of ongoing concern and urged the Committee to continue its efforts to address all human rights issues relevant to the implementation of Security Council resolutions 1373 (2001) and 1624 (2005), including by promoting such good practices as reviewing counter-terrorism legislation before adoption, time-limited laws, independent oversight bodies for law enforcement and intelligence agencies and periodic review of sanction measures. OHCHR briefed the Counter-Terrorism Committee in June 2015, focusing on the issue of foreign fighters. In the briefing, the Office highlighted the concerns raised in the December 2014 report of the High Commissioner (see para. 58 above) and underlined the need to take a three-pronged approach to tackling the issue, namely, addressing the conditions conducive to terrorism, accountability for violations and abuses and ensuring that any measures taken by States are consistent with their obligations under international human rights law.

61. OHCHR continued to address complex legal and policy challenges relating to new technologies that are of direct relevance to States' efforts to counter terrorism. From November 2013 to March 2014, the Office partnered with the United Nations University in a research project on the application of international human rights law to national regimes overseeing governmental digital surveillance. It also launched an open consultation in February 2014, inviting the input of stakeholders through a questionnaire on the right to privacy in the context of domestic and extraterritorial surveillance. Also in February 2014, the previous High Commissioner delivered a keynote address to an expert seminar organized by a group of States led by Germany and Brazil, and facilitated by the Geneva Academy of International Humanitarian Law and Human Rights, in which she outlined challenges to ensuring the right to privacy in the context of domestic and extraterritorial surveillance.

62. Drawing on the research panel, open consultation, expert seminar and other sources of information, as mandated by the General Assembly in its resolution 68/167, OHCHR submitted a report on the right to privacy in the digital age (A/HRC/27/37) to the Human Rights Council. In the report, OHCHR examined the protection afforded by international human rights law regarding privacy, including the meaning of "interference with privacy" in online communications, the definition of "arbitrary and unlawful" interference in that context and the question of whose rights are protected, and where. Following consideration of the report by the Council at its twenty-seventh session and the General Assembly at its sixty-ninth session, the Assembly adopted resolution 69/166, which included a number of proposed follow-up measures.

[7] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16210&LangID=E and www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15810&LangID=E.

63. Issues of relevance in the context of counter-terrorism were also addressed during two expert panel discussions organized by OHCHR: the panel discussion on the right to privacy in the digital age, held on 12 September 2014 pursuant to Council decision 25/117, and the panel discussion on ensuring the use of armed drones in counter-terrorism and military operations in accordance with international law, held on 22 September 2014 pursuant to Council resolution 25/22.

64. The Office promoted greater integration of a gender perspective into the context of counter-terrorism at two events held in October 2014: the workshop on the theme "Advancing women's roles in countering violent extremism and radicalization that lead to terrorism" organized in Vienna by the Global Counterterrorism Forum and the Organization for Security and Cooperation in Europe, and the panel discussion on the theme "The role of women in countering violent extremism" organized by the United Arab Emirates and the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women) in the framework of the open debate of the Security Council on women and peace and security.

65. Pursuant to Human Rights Council resolution S-22/1, the High Commissioner dispatched a mission to Iraq to investigate alleged violations and abuses of international human rights law committed by ISIL and associated terrorist groups, with a view to ensuring full accountability. The report on the mission (A/HRC/28/18) was presented to the Council at its twenty-eighth session. In its resolution S-23/1, the Council requested the Office of the High Commissioner to "prepare a report on violations and abuses of human rights and atrocities committed by the terrorist group Boko Haram in the States affected by such acts, with a view towards accountability". At the twenty-ninth session of the Council, the High Commissioner presented an oral update as part of an interactive dialogue on Boko Haram.[8] The report (to be issued under the symbol A/HRC/30/67) will be presented to the Council at its thirtieth session. Prior to resolution S-23/1, the High Commissioner had already deployed staff to gather reliable and timely human rights information on the activities of Boko Haram and the response by States.[9]

IV. Conclusions and recommendations

66. **When counter-terrorism efforts neglect the rule of law and violate fundamental rights, they not only betray the values they seek to uphold. They may also further fuel violent extremism. Respect of human rights and the rule of law is an essential and inseparable part of successful counter-terrorism action. Through the reaffirmation of the United Nations Global Counter-Terrorism Strategy, Member States have committed themselves to an integrated and balanced implementation of all four pillars of the Strategy. In so doing, they have also reaffirmed their commitment to ensuring the promotion and protection of human rights, fundamental freedoms and the rule of law, as reflected in pillar IV, in the implementation of all pillars of the Strategy.**

[8] Available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16177&LangID=E.

[9] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15782&LangID=E#sthash.wmCyrLgB.dpuf.

67. In this regard, Member States are encouraged to address the linkages between measures to address the conditions conducive to the spread of terrorism, as reflected in pillar I of the Strategy, and measures to ensure respect for human rights for all and the rule of law as the fundamental basis of the fight against terrorism, as reflected in pillar IV.

68. In line with their commitments under the Strategy, Member States should promote respect for, and compliance with, human rights and the rule of law as part of holistic and effective counter-terrorism strategies at the national and regional levels. The ratification and effective implementation of all international human rights treaties should form an integral part of such strategies.

69. The Secretary-General calls upon Member States to give due attention to and implement recommendations on the promotion and protection of human rights in the counter-terrorism context made by United Nations human rights mechanisms, including with regard to the principle of legality and due process guarantees. This includes recommendations by the Human Rights Council under the universal periodic review process, relevant special procedures mandate-holders, the human rights treaty bodies and the High Commissioner for Human Rights, including in reports to the Human Rights Council.

70. One central theme that can be drawn from these recommendations is the need to ensure that counter-terrorism laws and measures are compliant with international human rights law. The Secretary-General thus reiterates the critical need for regular review of the compliance of counter-terrorism laws and practices with human rights norms and standards to ensure that these measures are specific, necessary, effective and proportionate. The validity of any exceptional measure should be restricted in time. The Secretary-General calls upon all States, as part of the legislative process, to ensure broad and inclusive consultations with all relevant stakeholders and a review of draft counter-terrorism legislation by relevant domestic bodies before adoption to ensure that legislation is compatible with international human rights law.

71. Member States' response to violent extremism and terrorism must be forward-looking, proactive and based on the promotion and protection of human rights and the rule of law in accordance with pillar IV of the Global Counter-Terrorism Strategy. This approach will be reflected in the United Nations plan of action on preventing violent extremism that the Secretary-General intends to submit to the General Assembly later this year.

72. The Counter-Terrorism Implementation Task Force and its entities, in all of their activities in support of the implementation of the Strategy, should continue to promote respect for human rights and the rule of law as the fundamental basis of the fight against terrorism, and in particular ensure that such assistance is compliant with international human rights law.

73. Bearing in mind the critical role of civil society in countering violent extremism, promoting dialogue, defending human rights and enhancing social cohesion and integration of marginalized communities, Member States, as well as the Counter-Terrorism Implementation Task Force and its entities, should facilitate space for civil society, enhance their engagement with and support its role in the implementation of the Strategy.

74. **In their reports on progress made in the implementation of the Strategy, Member States, as well as the Counter-Terrorism Implementation Task Force and its entities, are encouraged to include information on measures they have taken to ensure respect for human rights for all and the rule of law as the fundamental basis of the fight against terrorism.**

75. **In regard to foreign fighters, Member States are urged to follow the three-pronged approach outlined by the High Commissioner: addressing the conditions conducive to terrorism, accountability for violations and abuses, and ensuring that any measures taken by States are consistent with their obligations under international human rights law.**